

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

JULIA WILLIAMS,

Plaintiff,

v.

CIVIL ACTION NO. 2:17-04162

**LOVED ONES IN HOME CARE, LLC
and DONNA SKEEN,**

Defendants.

NOTICE OF REMOVAL

TO: Cathy Gatson, Clerk
Circuit Court of Kanawha County
P. O. Box 2351
Charleston, WV 25328

Mark A. Toor, Esq.
Attorney at Law
10 Hale Street, 2nd Floor
Charleston, WV 25301

NOTICE OF REMOVAL

1. Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendants, Loved Ones In Home Care, LLC and Donna Skeen, hereby remove this civil action from state court to federal district court. Removal is proper because plaintiff's state law claims arise under federal law, require resolution of substantial federal questions, involve matters subject to exclusive federal jurisdiction, and otherwise are preempted by federal law.

VENUE

2. This action is pending in the Circuit Court of Kanawha County, West Virginia, where plaintiff Julia Williams originally brought this action.

3. The Circuit Court of Kanawha County is located within the Southern District of West Virginia, Charleston Division.

TIMING OF REMOVAL

4. Plaintiff filed a Complaint dated September 20, 2017. A copy of the summons and complaint were served on the West Virginia Secretary of State as agent for service of process for defendant Loved Ones In Home Care, LLC on September 22, 2017. A copy of the summons and complaint was received by Loved Ones In Home Care, LLC on September 29, 2017. A copy of all process pleadings served by or upon Defendants is attached as **Exhibit A**. No other papers in this action have been served on defendants at this time. A copy of the Kanawha County Action docket sheet is attached hereto as **Exhibit B**. This notice is filed within thirty (30) days after service of the summons and complaint on Defendant Loved Ones In home Care, LLC, from which it first could be ascertained that this case was removable, the Complaint.

NOTICE

5. Pursuant to 28 U.S.C. § 1446(d), Defendants will file a notice of filing of notice of removal in the Circuit Court of Kanawha County, West Virginia, a copy of which is attached as **Exhibit C**.

JURISDICTION

6. This action is removable because it could have been filed in this Court originally pursuant to the federal question jurisdiction conferred by 28 U.S.C. § 1331. This Court has original jurisdiction of this action under 28 U.S.C. § 1331 and this action is therefore removable

to this Court given that the claims made by Plaintiff fall within the federal question jurisdiction arising under federal statute, being the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 201, *et seq.* (“the FLSA”).

7. Pursuant to Paragraph 2 of the Complaint, Plaintiff is a citizen of Jackson County, State of West Virginia.

8. Pursuant to Paragraph 3 of the Complaint, the Defendant Loved Ones in Home Care, LLC is a West Virginia limited liability company and Defendant Donna Skeen is a member or the managing member of Loved Ones In Home Care, LLC.

GROUND FOR REMOVAL

9. This action is removable because it could have been filed in this Court originally pursuant to the federal question jurisdiction conferred by 28 U.S.C. § 1331. Here, the Plaintiff’s right to relief will necessarily depend on resolution of substantial questions of federal law. *See Pinney v. Nokia, Inc.*, 402 F.3d 430, 442 (4th Cir. 2005). This Court possesses federal question jurisdiction for reason that Plaintiff’s claims stem from an alleged violation of the FLSA. In this case, “removal is appropriate” because “the complaint raises a federal question.” *Craddock v. AdOn Network, Inc.*, No. 2:10-cv-01401, 2011 U.S. Dist. LEXIS 45533, at *3-4 (S.D. W. Va. Apr. 27, 2011) citing *Lontz v. Tharp*, 413 F.3d 435, 439 (4th Cir. 2005). Plaintiff asserts, among other things, that “Defendants failed and refused to pay Plaintiff in accordance with the mandates of the FLSA” and, as a result, “has suffered damages by way of lost overtime wages[.]” *See* Complaint at ¶ 12. Plaintiff further asserts that Defendants knowingly and deliberately failed and refused to pay Plaintiff in accordance with the mandates of the FLSA[.] *See* Complaint at ¶ 13. In sum, Plaintiff is only seeking monies for alleged overtime violations under the FLSA and attorney fees, costs and interest associated with her FLSA claim. *See* Complaint at p. 3 (Prayer

for Relief at ¶ a). Subject to certain exceptions not applicable here, “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or defendants, to the district court of the United States for the district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a).

11. Defendants reserve the right to amend or supplement this Notice of Removal or to present additional arguments in support of their entitlement to remove this case.

12. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being filed with the Circuit Court of Kanawha County.

WHEREFORE, Defendants, Loved Ones In Home Care, LLC and Donna Skeen, gives notice that this civil action has been removed from the Circuit Court of Kanawha County, West Virginia, to the United States District Court for the Southern District of West Virginia, and that said state court proceed no further with this action.

DATED: October 13, 2017.

LOVED ONES IN HOME CARE, LLC
and DONNA SKEEN
By Counsel

/s/Webster J. Arceneaux, III
Webster J. Arceneaux, III (WVSB No. 155)
Lori D. Counts-Smith (WVSB No. 11386)
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing *Notice of Removal* was mailed to counsel of record listed below and the Clerk of the Circuit Court of Kanawha County, by regular first-class U.S. Mail, postage prepaid, this 13th day of October, 2017.

Cathy Gatson, Clerk
Circuit Court of Kanawha County
P. O. Box 2351
Charleston, WV 25328

Mark A. Toor, Esq.
Attorney at Law
10 Hale Street, 2nd Floor
Charleston, WV 25301
Counsel for Plaintiff

/s/Webster J. Arceneaux, III
Webster J. Arceneaux, III (WVSB No. 155)
Lori D. Counts-Smith (WVSB No. 11386)
Andrew L. Ellis (WVSB No. 10618)
***Counsel for Loved Ones In Home Care, LLC
and Donna Skeen***